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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

File: LIN-00-243-51234 Office: Nebraska Service Center

Date: **MAY 29 2003**

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

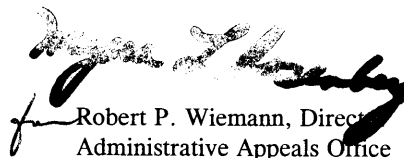
**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Nebraska Service Center. A subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO) on January 28, 2002. The matter is again before the AAO on motion to reconsider. The motion will be dismissed.

The petitioner is described as a church that seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153 (b)(4), in order to employ him as a youth pastor.

The director denied the petition on January 9, 2001, citing multiple grounds of ineligibility. Counsel for the petitioner timely filed a Form I-290B Notice of Appeal and indicated that a separate brief would be submitted within thirty days.

The AAO, summarily dismissed the appeal on January 28, 2002, pursuant to 8 C.F.R. § 103.3(a)(3)(v), finding that a brief had never been received by the AAO.

Counsel now files a motion to reconsider the appellate decision arguing that a brief was submitted to the Nebraska Service center in a timely manner. On motion, counsel submitted a copy of an unprocessed FedEx airbill and a letter dated February 13, 2002, in which a representative of Federal Express indicates that correspondence from counsel was delivered on March 5, 2001 to the Nebraska Service Center. The record as presently constituted contains no such correspondence.

According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. To prevail on a motion for reconsideration, the petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." 8 C.F.R. § 103.5(a)(3).

Based on the record as constituted, it must be concluded that the petitioner has failed to establish that the prior decision summarily dismissing the appeal was incorrect at the time it was issued. Therefore, the motion must be dismissed.

The petitioner is free to file a new petition without prejudice.

**ORDER:** The motion is dismissed.